# In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1797

MOBLEY M. MILAM, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In October 1969 petitioner instituted this mandamus action against the United States, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of San Francisco, seeking to have them required to redeem a $50.00 Federal Reserve note in "lawful money". Milam alleged that he had tendered such a note to the Federal Reserve Bank of San Francisco, which had refused to redeem it in "lawful money" other than equivalent Federal Reserve notes (Pet. App. E). The district court granted summary judgment for the federal defendants on the ground that Milam had failed to state a claim upon which relief could be granted (Pet. App. B). The court of appeals affirmed (Pet. App. A).

Petitioner contends that 12 U.S.C. 411, which provides that "Federal reserve notes * * * shall be redeemed in lawful money on demand * * * at any Federal Reserve

bank," requires that his Federal Reserve note be redeemed only in U.S. coin, U.S. notes, or demand Treasury notes. This contention is without merit. As this Court held in *Julliard* v. *Greenman*, 110 U.S. 421, 448, under the Constitution "Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals." Congress has clearly designated Federal Reserve notes as among United States currencies (see 31 U.S.C. 392, 444, 463 (b)), and has thereby indicated its intent to consider such notes as "lawful money," *i.e.*, as money in circulation by sanction of the laws of the United States. See Simmons, *The Concept of Lawful Money*, 46 J. Pol. Econ. 108, 118 (1938); *State* v. *Elliott*, 110 Kan. 40, 202 Pac. 847. See, generally, "Lawful money," 52A C.J.S., p. 746.[1] Indeed, of approximately $72.2 billion in coin and paper money in circulation as of April 30, 1974, approximately $63.7 billion was in the form of Federal Reserve notes.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

AUGUST 1974.

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[1]See, also, *Koll* v. *Wayzata State Bank*, 397 F. 2d 124 (C.A. 8); *Horne* v. *Federal Reserve Bank of Minneapolis*, 344 F. 2d 725 (C.A. 8).

[2]Department of Treasury Fiscal Service, Bureau of Government Financial Operations, Form 1028, Statement of United States Currency and Coin, April 30, 1974.